

David A Martinez
2316 Gatewood St,
Los Angeles, CA 90031
323-494-4400

Plaintiff as Pro Per

FILED
CLERK, U.S. DISTRICT COURT
July 18, 2022
CENTRAL DISTRICT OF CALIFORNIA
BY: _____ DBE DEPUTY

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

David Armando Martinez,) Case No. 2:22-cv-02651-AB-KS
Plaintiff,)
vs.)
Robinhood Crypto LLC et al, and DOES 1 - 4) NOTICE OF MOTION AND MOTION TO STRIKE
Defendants.) DEFENDANT ROBINHOOD'S ANSWER &
) ENTRY OF DEFAULT; DECLARATION OF
) DAVID A MARTINEZ IN SUPPORT OF MOTION
) TO STRIKE & ENTRY OF DEFAULT
) DATE: July 29, 2022
) TIME: 10:00am
) Judge: Hon. Andre Birotte Jr
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TO DEFENDANTS ROBINHOOD CRYPTO LLC & ROBINHOOD SECURITIES LLC,
AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on July 29th, 2022, at 10:00am or as soon after that as the matter can be heard in courtroom 7B of the First Street Courthouse, 350 West First Street, Los Angeles, CA 90012. Plaintiff David Armando Martinez (“Plaintiff”) will move this Court for an order striking the entire Answer filed by Defendant Robinhood Crypto LLC & Robinhood Securities LLC (“Defendant”) on file herein, or in the alternative for an order striking ALL the affirmative

1 defenses contained in the Answer filed by Defendant. The grounds for this Motion to Strike are set
2 forth below.

**MOTION TO STRIKE ANSWER FILED BY DEFENDANT ROBINHOOD CRYPTO
LLC & ROBINHOOD SECURITIES LLC.**

This Motion to Strike is made pursuant to *Code of Civil Procedure* §§ 435-437 on the grounds that the answer is not verified even though the complaint is verified which is required by *Code of Civil Procedure* § 446. Thus, the entire answer should be stricken.

This Motion to Strike is also made on the alternative grounds that errors with submitted documents: Defendants' Notice of Motion and Motion to Dismiss Complaint & Request for Judicial Notice Lacked Proof of Service upon pro se plaintiff, F.R.Civ.P.5.

The following

1. SERVICE ON DAVID A MARTINEZ WAS IMPROPER

On June 30th, Samer N. Aref defendants counsel purported to serve David A Martinez by CM/ECF & Electronic Mail. Service was improper under Rule F.R.Civ.P.5 2 Service in General (f) states that process may be served upon a pro se plaintiff:

(f) delivering it by any other means that the person consented to in writing—in which event service is complete when the person making service delivers it to the agency designated to make delivery.

Defendant's failed to meet plaintiff's written consent as indicated by David A Martinez Original complaint and summons. The listed consent addressed "2316 Gatewood St, Los Angeles CA 90031" as the method of service when plaintiff served defendant on 05/19/2022. As a result, defendants' motion to dismiss filed on June 30th, 2022, and proof of service and declaration by Samer N Aref both failed to address and comply with plaintiffs' consent and making there answer improper.

1 2. The second affirmative defense alleging statement of non- opposition submitted on
2 07/11/2022 on the grounds that this defense contains allegations that are wholly irrelevant to the
3 causes of action alleged in their answer, and
4 thus, constitute immaterial allegations.
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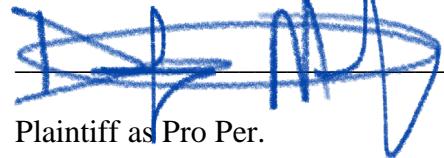
6 3. Finally on July 1st, 2022, the court notified defendant of deficiencies in their Request for
7 Judicial Notice, Document 23, Notice of Motion and Motion to Dismiss for Lack of Jurisdiction
8 Document 22. Please see Document 25 & notice of electronic filing.

9 4. Entry of Default – Plaintiff Served Defendant Complaint and summon on 05/19/2022 with a
10 deadline of 06/09/2022. Furthermore, plaintiff granted an extension to defendant for time to answer
11 complaint on June 2, 2022, for an extension of time with a new deadline of June 30th, 2022.
12 Defendant has failed to respond as indicated in the complaint and failed to serve plaintiff based on
13 court procedures. Plaintiff has properly served and notified defendant by serving Sapphire
14 Macfarlene as authorized to accept.
15
16

17 In conclusion, Plaintiff's David A Martinez et al, move to strike & request entry of default
18 judgement for failure to respond to complaint by its deadline of 06/30/2022 & for failure to further
19 amend and correct deficiencies & serve plaintiff to its consented place of service.
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22 Dated July 11, 2022,

23 David Armando Martinez, Pro Se

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25 Plaintiff as Pro Per.
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1 David Armando Martinez
2 2316 Gatewood St,
3 Los Angeles, CA 90031
4 1 (323)494-4400
5 mrfivestar@outlook.com

6 Plaintiff as Pro Per
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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA – Western Division

David Armando Martinez, et al
Plaintiff,
v.
Robinhood Crypto LLC et al
Defendant.

Case No. 2:22-CV-02651-AB-KS

Declaration of David Armando Martinez In Support to Notice of Motion and Motion to Strike And Entry of Default – Meet & Confer LR 52-4.1

**Date: July 29, 2022
Time: 10:00am
Courtroom: 7B
Assigned to : Hon Andre Birotte Jr**

1. I David Armando Martinez, declare that if called as witness, I could and would competently testify to the following matters. The matters stated in this declaration are true and correct to the best of my knowledge.

2. I have never consented or gave written permission to anyone to serve me in any method other than by mail.

3. I have never given Samer N Aref written permission to deliver summons, complaint or any other answer by electronic mail or by utilizing the courts CF/ECF system.

1 4. During our Meet and Confer on June 1, 2022 & on June 2, 2022, I
2 granted Defendants additional time to answer the complaint for which
3 further discussion in person occurred on June 7, 2022 in person in Los
4 Angeles, CA where we attempted to resolve my complaint informally.

5

6 5. William Turner during conference reviewed my claims and stated he will
7 later contact me after briefing his clients on my claim for damages.

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9

10 I declare under penalty of perjury, under the laws of the State of California
11 and the United States of America, that the foregoing is true and correct, and
12 that this declaration was executed in Los Angeles, CA this 11th day of July,
13 2022.

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David Armando Martinez

A handwritten signature in blue ink, appearing to read "David Armando Martinez". The signature is somewhat stylized and includes several loops and crosses.

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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address)		TELEPHONE NUMBER	FOR COURT USE ONLY
		(323) 494-4400	
Five Star & Socius Inc 2316 Gatewood St Los Angeles, CA 90031 ATTORNEY FOR Self Represented			
CENTRAL DISTRICT, LOS ANGELES - ROYBAL BLDG 255 East Temple St. Los Angeles, CA 90012			
SHORT TITLE OF CASE: Five Star & Socius Inc v. Robinhood Crypto LLC			
DATE:	TIME:	DEP./DIV.	CASE NUMBER:
06/09/2022	8:00 AM		cv22-2651-ab
Proof of Service			Ref. No. or File No:

1. At the time of service I was at least 18 years of age and not a party to this action, and I served copies of the:

Complaint; ADR Information Packet; Civil Case Cover Sheet; Summons; standing order; notice of lodging; notice of judges; consent to magistrate judge

2. Party Served: **Robinhood Crypto LLC**

3. Address: **7801 Folsom Blvd, 202 Sacramento , CA 95826**

On: **5/19/2022** At: **12:29 PM PT**

4. I served the Party named in item 2, by serving:

Sapphire Macfarlane (Gender: F Age: 30 Height: 5'6" Weight: 140 Race: White Hair: Brown Other: Brown eyes)
Authorized to accept

5. A declaration of diligence and/or mailing is attached, if applicable.

Person attempting service:

- a. Name: **Michael Van Hooser**
- b. Address: **871 Coleman Avenue #102, San Jose, CA 95110**
- c. Telephone number: **408-295-3300**
- d. The fee for this service was: **125.00**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



Sterling Madison Company
Trusted Professional Legal Support

Michael Van Hooser

Date: **05/19/2022**

1 David Armando Martinez, pro se

2 2316 Gatewood St ,
3 Los Angeles, CA 9031
4 1(323)494-4400
mrfivestar@outlook.com

5 Individual Corporate Officer as Pro Se

6

7 **UNITED STATES DISTRICT COURT**

8 **FOR THE CENTRAL DISTRICT OF CALIFORNIA – Western District**

9

10 Five Star & Socius Inc, et al,

11 David Armando Martinez,
12 Plaintiff,
13 v.

14 Robinhood Crypto LLC, et al,

15 Robinhood Securities LLC
16 Defendants,

Case No. 2:22-CV-02651-AB-KS

[Proposed Order] Order Granting Plaintiff's David A Martinez Motion to Strike Defendant's Request for Judicial Order & Notice of Motion & Motion to Dismiss Complaint & Entry of Default

Hearing: July 29, 2022

Time: 10:00am

Courtroom: 7B

Judge: Hon Andre Birotte Jr

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21 **[PROPOSED] ORDER GRANTING MOTION TO STRIKE & ENTRY OF**

22 **DEFAULT**

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24 ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

25 Plaintiff David Armando Martinez et al ("Plaintiff") Motion to Strike
26 Defendant Robinhood Crypto LLC et al ("Defendant's") Answer and Entry of
27 Default, came on for hearing in Courtroom 7B of the First Street Courthouse,
28 350 West First Street, Los Angeles, CA 90012, on July 29, before the honorable

1 || judge Andre Birotte Jr.

2 Based upon the documents submitted, oral argument at the time of
3 the hearing, the courts records on file and for good cause appearing therefore;

4 IT IS HEREBY ORDERED:

5 The following portions of Defendants answer are stricken:

6 1. Request for Judicial Notice.

7 2. Notice of Motion & Motion to Dismiss for lack of Jurisdiction

8 3. Statement of Non-Opposing

10 Furthermore, Entry Of Default – “For a judgement against defendants, and
11 each of them for exemplary damages in an amount to be proven at trial” is
12 [GRANTED with _____ days/without leave to amend] or [DENIED]

16 || Dated:

Honorable Andre Birotte Jr

United States District Judge